

**This Opinion is Not a
Precedent of the TTAB**

Mailed: November 3, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Oral Arts Laboratory, Inc.
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Serial No. 88092627
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Jon E. Holland of Maynard, Cooper & Gale, P.C.,
for Oral Arts Laboratory, Inc.

Robert Ratcliffe, Trademark Examining Attorney, Law Office 130,
John Lincoski, Managing Attorney.

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Before Lynch, Coggins and Lebow,
Administrative Trademark Judges.

Opinion by Lynch, Administrative Trademark Judge:

I. Background

Oral Arts Laboratory, Inc. (“Applicant”) seeks to register on the Principal Register
the proposed stylized mark shown below



BioLogic
Hybrid

for the following goods in International Class 10:

Dental implants; dental crowns; dental fixtures, namely, prefabricated parts for crowns, bridges and pontics.¹

The Examining Attorney refused registration on the ground that the proposed mark is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

Applicant appealed, and filed its Appeal Brief. A newly-assigned Examining Attorney then requested a remand to introduce newly discovered evidence, and to request Applicant to provide additional information about the goods; the Board granted the request. In contrast to the previously submitted general definitions of the words in the proposed mark, the new evidence pertained to use of the words as terms of art in the dental industry.

The Examining Attorney ultimately maintained the Section 2(e)(1) refusal, and the case returned to the Board for resumption of the appeal. Although the Board afforded Applicant time to file a supplemental brief, it did not do so. The Examining Attorney then filed his brief.

For the reasons set forth below, we affirm the refusal to register.

¹ Application Serial No. 88092627 was filed August 24, 2018, based on an alleged bona fide intent to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). Color is not claimed as a feature of the mark. The application includes the following description: “The mark consists of the stylized words ‘BIOLOGIC HYBRID,’ where the word ‘BIOLOGIC’ appears above and in a larger font than the word ‘HYBRID’. The characters ‘BIO’ in the stylized word ‘BIOLOGIC’ appear in a bolder font than the remaining characters ‘LOGIC’.”

II. Descriptiveness

The refusal rests on Section 2(e)(1) of the Trademark Act, which precludes registration of “a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive . . . of them.” 15 U.S.C. § 1052(e)(1). A term is merely descriptive within the meaning of the statute “if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2017) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *see also In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015).

Descriptiveness must be assessed “in relation to the goods for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use.” *Bayer AG*, 82 USPQ2d at 1831 (citing *In re Abcor Dev.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978)). The descriptiveness analysis concentrates on the goods identified in the application. *See In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1636 (Fed. Cir. 2016) (quoting *Octocom Sys., Inc. v. Houston Comput. Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)).

In this case, Applicant and the Examining Attorney agree that the average purchaser of these goods would be a dentist or dental professional.²

² 4 TTABVUE 4 (Applicant’s Brief); 11 TTABVUE 4 (Examining Attorney’s Brief).

Evidence that a term is merely descriptive to the relevant purchasing public “may be obtained from any competent source, such as dictionaries, newspapers, or surveys[.]” *Bayer AG*, 82 USPQ2d at 1831; *see also Princeton Vanguard, LLC v. Frito-Lay North Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1833 (Fed. Cir. 2015), as well as “labels, packages, or in advertising material directed to the goods.” *Abcor Dev.*, 200 USPQ at 218. It may also be obtained from websites and publications, including the applicant’s own website. *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1710 (Fed. Cir. 2017); *In re Hikari Sales USA, Inc.*, 2019 USPQ2d 111514, *9 (TTAB 2019).

The Examining Attorney contends that the words in the mark are terms of art in the dental field, and that Applicant’s goods are “hybrid materials for use in biologic dentistry,” such that the proposed mark merely describes this characteristic or purpose.³ The Examining Attorney points to multiple third-party websites and a Wikipedia page that he says show that BIOLOGIC refers to “a type of dentistry that uses biocompatible or bioinert materials (e.g., non-metal composites) and is concerned with the impact that dental procedures and dental goods have on a patient’s overall health.”⁴ As to HYBRID, the Examining Attorney relies on a third-party website and a Wikipedia page that he claims show that HYBRID “refers to a type of composite used in dental components.”⁵ According to the Examining Attorney, “relevant consumers in the dental field would understand the wording ‘BIOLOGIC’ and

³ 11 TTABVUE 3-4 (Examining Attorney’s Brief).

⁴ *Id.* at 5.

⁵ *Id.*

‘HYBRID’ to merely describe applicant’s goods. Moreover, the combination of terms does not provide any new unique, incongruous, or otherwise nondescriptive meaning in the context of the dental field.”⁶ Finally, the Examining Attorneys maintains that the stylization in Applicant’s mark is minimal and does not create a separate commercial impression that would justify registering descriptive wording.

Applicant, on the other hand, contends that the combination of words renders the mark suggestive, explaining that:

The use of the word “biologic” [which Applicant defines as “something that is biological in nature or, in other words, that is synthesized from a living organism”] to describe “hybrid” immediately conjures an impression of a living “hybrid” that has been synthesized from living organisms. A consumer would readily recognize that a good associated with the mark is not actually a living “hybrid” from living organisms or, in other words, is not truly a biologic or biological hybrid. However, the suggestion that the goods have such a quality make them more appealing to consumers by implying that they are more natural and thus compatible with the human body.⁷

As noted previously, Applicant’s Brief pre-dated the remand and introduction of the new industry-specific evidence, and Applicant did not file a supplemental brief to address those issues as the Board had authorized. Applicant therefore does not address the arguments and evidence that BIOLOGIC and HYBRID are terms with specific meanings in the dental field. However, in responding to the Office actions following the remand, Applicant emphasized “the overall impression of the mark,

⁶ *Id.* at 7.

⁷ 4 TTABVUE 5 (Applicant’s Brief).

including graphical elements.”⁸ Applicant contended that even assuming that the wording is descriptive, “[t]he font style variations and inter-word capitalization emphasize the term ‘Bio’ in [the] overall mark in way that suggests to a consumer that the product is highly natural and thus more compatible with the human body.”⁹

“In considering a mark as a whole, the Board may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components.” *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004). We first find it “useful to consider the public’s understanding of the individual words.” *Princeton Vanguard*, 114 USPQ2d at 1832-33.

Turning first to BIOLOGIC, the record includes the following:

Wikipedia notes that “Holistic dentistry [is] also called biological dentistry [and] biologic dentistry....”¹⁰

The Holistic Dentistry Spokane Valley website explains that “Holistic dentistry [is] sometimes also called biologic dentistry,” and its “guiding principles” include that “[d]ental materials should be biocompatible or bioinert.”¹¹

According to the Studio Z Dental website, “Holistic dentistry, also referred to as biologic dentistry, is an alternative approach that focuses on the use of non-toxic restorative materials for dental work, and emphasizes the unrecognized impact that dental toxins and dental infections may have on a person’s overall health.”¹²

⁸ TSDR November 12, 2020 Response to Office Action at 1.

⁹ *Id.*

¹⁰ TSDR May 12, 2020 Office Action at 4 (wikipedia.com).

¹¹ TSDR May 12, 2020 Office Action at 5 (wemakespokanevalleymile.com).

¹² TSDR May 12, 2020 Office Action at 7 (studioz dental.com).

The Trovato Nutrition Holistic Health Wellness Center website states, under the heading “Biologic Dentistry,” that this is “an approach to dentistry that recognizes that the mouth and body are connected,” emphasizing that “Biologic Dentists are general more conservative than traditional dentists.” The explanation goes on to identify “one of the best Biologic Dental Offices on the East Coast,” noting that “the goal of biological dentistry is to find the most conservative dental treatments using biocompatible materials that do not impact the teeth or body in a negative way.”¹³

The Wrigleyville Dental Holistic Dentistry website states, “[b]iologic dentists believe that placing metal and/or other foreign materials in the teeth and gums may have unintended consequences.”¹⁴

The Kea Smile Studio website identifies “Holistic/Biologic Dentistry” as emphasizing the “link between oral health and overall wellbeing.”¹⁵

The website of Natural Awakenings includes an announcement that Alex Shvartsman has completed “board certification in integrative biologic dental medicine (IBDM), as well as his completion of naturopathic doctor (ND) degree,” as part of his efforts to “deliver the best holistic, minimally invasive and toxin-free biologic dentistry to his patients.” The announcement also states that he “will use his training to augment his already successful biologic dentistry techniques.”¹⁶

Turning next to HYBRID, the record includes the following:

A Wikipedia article on “Hybrid material” defines it as “composites consisting of two constituents at the nanometer or molecular level.” The list of “Applications” for

¹³ TSDR May 12, 2020 Office Action at 3 (trovatonutrition.com).

¹⁴ TSDR May 12, 2020 Office Action at 2 (wrigleyvilledental.com).

¹⁵ TSDR May 12, 2020 Office Action at 6 (keasmile.com).

¹⁶ TSDR May 12, 2020 Office Action at 8 (naturalawakensingsli.com).

hybrid material includes “Nanocomposite based dental filling materials.”¹⁷

The qualitydentistry.com website includes a “Dental Terminology” glossary that defines “composite” and states: “There are two types of materials widely used and accepted and they are classified as *hybrids* or *microfills*.” The entry further explains that “[h]ybrids have large particle sizes and are extremely good at bonding and allow for some patients the possibility to have a bridge made.”¹⁸

The Midtown Dentistry website refers descriptively to “hybrid denture” options.¹⁹

The Preat website promoting TriLor High Performance Polymer²⁰ refers to industry articles including one titled “Mission Accepted: The Four Day Hybrid Denture Restoration with TriLor.”²¹

Two third-party registrations include a disclaimer of HYBRID for goods that overlap with Applicant’s.²²

Applicant’s website displays the mark next to text stating, “[t]he BioLogic Hybrid consists of a framework milled from Trilor, which is a hi-tech fiber composite material consisting of an epoxy resin matrix and multi-directional glass fiber reinforcement. This FDA approved framework has excellent bonding strength...”²³ *See In re Reed Elsevier Props.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007) (appropriate

¹⁷ TSDR May 12, 2020 Office Action at 13 (wikipedia.com).

¹⁸ TSDR May 12, 2020 Office Action at 12 (qualitydentistry.com) (emphasis in original).

¹⁹ TSDR June 18, 2019 Office Action at 40 (midtowndentistry.com).

²⁰ Applicant’s website indicates that its goods under the proposed mark are milled from Trilor. TSDR May 12, 2020 Office Action at 14 (oralartsdental.com).

²¹ TSDR April 10, 2020 Office Action at 11 (preat.com).

²² TSDR June 18, 2019 Office Action at 20 (Registration No. 5162132), 25 (Registration No. 5582445).

²³ TSDR May 12, 2020 Office Action at 14 (oralartsdental.com).

to consider the applicant's website to provide context for and inform the understanding of the identification); *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420, 1422 (Fed. Cir. 2005) (examining the subject website in order to understand the meaning of terms).

The evidence demonstrates that each word in Applicant's mark describes characteristics of at least certain types of the identified goods. BIOLOGIC describes dental materials appropriate for use in biologic, or holistic, dentistry. HYBRID describes that the goods are made from hybrid or composite materials that promote bonding.

Where a proposed mark such as this one consists of multiple words, the mere combination of descriptive words does not necessarily create a nondescriptive expression. *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1662 (TTAB 1988) (GROUP SALES BOX OFFICE unregistrable for theater ticket sales services); *In re Phoseon Tech. Inc.*, 103 USPQ2d 1822, 1826 (TTAB 2012) (SEMICONDUCTOR LIGHT MATRIX merely descriptive for light curing systems and UV curing systems). If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive and unregistrable. *Oppedahl & Larson*, 71 USPQ2d at 1371. On the other hand, if a proposed mark that combines merely descriptive components creates a unitary phrase with a unique, nondescriptive meaning, or if the composite has an incongruous meaning as applied to the goods or services, or forms a double entendre, the mark may be registrable. *See In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382, 385

(CCPA 1968) (SUGAR & SPICE for bakery products); *In re Shutts*, 217 USPQ 363, 364-65 (TTAB 1983) (SNO-RAKE for “a snow removal hand tool having a handle with a snow-removing head at one end, the head being of solid uninterrupted construction without prongs”).

Considering Applicant’s mark in its entirety, we find that the combination of individually descriptive terms does not result in a whole that is greater than the sum of its parts, so as to avoid descriptiveness. Indeed, Applicant has not offered up any argument as to what non-descriptive meaning the combination of wording might have. Overall, the evidence convinces us that dentists and dental professionals would understand BIOLOGIC HYBRIDS as describing features of Applicant’s goods. This is consistent with the definitions and industry use of the individual words.

Finally, in weighing the mark as a whole, we consider the stylization of



. For the display of descriptive matter to render a mark registrable, absent acquired distinctiveness, the display must create an impression separate and apart from the descriptive wording. *Cordua Rests.*, 118 USPQ2d at 1639. In Applicant’s mark, the degree of stylization is minimal and the display is unremarkable. The block lettering and use of bolding are not unique or unusual.

Contrary to Applicant’s contention, we are not persuaded that the capitalization within the word BIOLOGIC detracts from or change the connotation or commercial impression of the proposed mark by emphasizing “bio,” especially given the particular significance of BIOLOGIC within the dental industry. Even if “bio” can have another

meaning in other contexts, if any one of the meanings of a term is descriptive in context, the term may be considered to be merely descriptive. *In re Mueller Sports Med., Inc.*, 126 USPQ2d 1584, 1590 (TTAB 2018). The record in this case clearly shows that “biologic dentistry” is a type of dentistry, and we find that dentists and dental professionals would recognize BIOLOGIC as displayed in Applicant’s mark to refer to such dentistry and would attribute that meaning to the term regardless of the stylization and capitalization.

Decision: We affirm the refusal to register Applicant’s proposed mark on the Principal Register on the ground of mere descriptiveness.